

KEYWORD: Guideline F

DIGEST: The Board may not consider new evidence on appeal. Although Applicant strongly disagrees with the Judges conclusions she has not demonstrated that they are erroneous. The favorable evidence cited by Applicant is not sufficient to demonstrate that the Judge decision was arbitrary, capricious or contrary to law. Adverse decision affirmed.

CASENO: 05-03188.a1

DATE: 03/01/2007

DATE: March 1, 2007

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In Re:	)	
	)	
-----	)	ISCR Case No. 05-03188
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

## **APPEAL BOARD DECISION**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Eric Borgstrom, Esq., Department Counsel

#### **FOR APPLICANT**

*Pro Se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On August 19, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant

requested the case be decided on the written record. On June 20, 2006, after considering the record, Administrative Judge Claude R. Heiny denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred by concluding that the security concerns raised under Guideline F had not been mitigated.

Applicant argues that the Judge's adverse decision should be reversed because the Judge did not give sufficient weight to Applicant mitigating evidence which she contends demonstrates that her financial problems were not recent<sup>1</sup> and were due to circumstances beyond her control—a serious medical emergency related to lead poisoning, her loss of employment, and a divorce.<sup>2</sup> In support of her argument, Applicant offers statements and documentary evidence which further describes her medical condition.<sup>3</sup> Applicant's argument does not demonstrate error on the part of the Judge.

The Board may not consider new evidence on appeal. *See* Directive ¶ E3.1.29. In any event, such evidence does not demonstrate error on the part of the Judge.

Applicant has not met her burden of demonstrating that the Judge erred in concluding that the financial considerations allegations had not been mitigated. Although Applicant strongly disagrees with the Judge's conclusions, she has not established that those conclusions are arbitrary, capricious, or contrary to law. *See* Directive ¶ E3.1.32.3.

The application of disqualifying and mitigating conditions does not turn simply on a finding that one or more of them applies to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole. *See, e.g.,* ISCR Case No. 01-14740 at 7 (App. Bd. Jan.15, 2003). Thus, the presence of some mitigating evidence does not alone compel the Judge to make a favorable security clearance decision. As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. An applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.

In this case, the Judge found that Applicant had a lengthy and serious history of not meeting financial obligations. At the time the case was submitted for decision, Applicant still had more than 50 delinquent debts totaling approximately \$29,000. In light of the foregoing, the Judge could reasonably conclude that Applicant's financial problems were still ongoing. The Judge weighed the mitigating evidence offered by Applicant against the length and seriousness of the disqualifying conduct and considered the possible application of relevant mitigating conditions. The Judge articulated a rational basis for not fully applying any mitigating conditions in this case, and

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<sup>1</sup>*See* Directive ¶ E2.A6.1.3.1.

<sup>2</sup>*See* Directive ¶ E2.A6.1.3.3.

<sup>3</sup>Applicant did not file a response to the government's file of relevant material (FORM).

reasonably explained why the evidence which the Applicant had presented in mitigation was insufficient to overcome the government's security concerns. The Board does not review a case *de novo*. The favorable record evidence cited by Applicant is not sufficient to demonstrate the Administrative Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 02-28041 at 4 (App. Bd. June 29, 2005). Given the record that was before him, the Judge's ultimate unfavorable clearance decision under Guidelines F is sustainable. Thus, the Judge did not err in denying Applicant a clearance.

### **Order**

The decision of the Judge denying Applicant a clearance is AFFIRMED.

Signed: Jean E. Smallin

Jean E. Smallin

Administrative Judge

Member, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board